PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS.

91-1683

(1)

Supreme Court, U.S.
FILED
APR 9 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1991

RE: EARLENE POLYAK

EARLENE POLYAK — Petitioner

v

FRANK HULEN AND
WILMA LESNANSKY — Respondent

v

THOMAS STACK AND
HENRY HENRY & STACK — Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
AND THE UNITED STATES DISTRICT COURT
FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
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4063 Hood Road
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QUESTIONS PRESENTED

1.Does the Civil Rights Act of 1964, as amended in Public Law 102-166 on November 21, 1991, provide relief from intentional discrimination and discriminatory practices for federally protected rights include the exclusion from United States Department of Agriculture federal alloted burley tobacco in Equal Employment Opportunity for sex and race?

2.Does the enjoin from filing complaints regarding property in the United States District Court, Columbia Division, Middle Tennessee violate Title I Federal Civil Rights Remedies in Revised "A Person" 42 U.S.C. 1981?

3.Is the awarding of attorney fees and cost to Robert Boston, son of previous attorney, William Boston,Boston Bates & Holt, violation of attorney-client confidentiality? And should attorney son be allowed use of enjoin to discriminate in other Courts?

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Petitioner prays that a writ of certiorari issue from the Supreme Court to review the orders of the United States Court of appeals, and the United States District Court for the Sixth Circuit pursuant to 28 U.S.C. §2101.

Cases Nos: 91-5655/5656/5657: 91-5655 Frank Hulen and Wilma Lesnansky v Earlene Polyak(counter-claim);91-5656 Earlene Polyak v Frank Hulen and Wilma Lesnansky; 91-5657 Earlene Polyak v Thomas Stack and Henry Henry & Stack: 91-6489(1:87-0075 Earlene Polyak v Frank Hulen and Wilma Lesnansky (counter-claim).

Polyak v Mr. Edward Madigan,Secretary of the United States Department of Agriculture.

OPINIONS BELOW

The opinions of the United States Court of Appeals are set forth in Appendix A. The opinions of the United States District Court are set forth in Appendix B, and any related opinions in companion cases are set forth in Appendix C.

JURISDICTION

The order of the United States Court of Appeals denying rehearing of 91-5655/5656/5657 was filed on January 13, 1992 and this petition for writ of mandamus is timely within ninety (90) days thereof.

The jurisdiction of this Supreme Court is invoked pursuant to Article II Sec., 2, which states that all judicial power shall extend to all cases of law and equity, between state and citizens of another state; between citizens of different states.

The jurisdiction is invoked in 28 U.S.C.

2101; 42 U.S.C. 1981;1982;1983, 28 U.S.C. 1443; Civil Rights Act of 1964, and Public-Law 102-166 signed on November 21, 1991, Fifth, Seventh, and Fourteenth Amendments and other pertinent leglislation.

The federal and constitutional questions of the abuse of discretion in the denial of due process and the deprivation of civil and constitutional rights and laws.

CONSTITUTIONAL PROVISIONS

The pertinent portion or the Fifth Amendment provides as follows:

> No...person shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.
>
> U.S. Const. Amen. V Cl 3 & 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value in controversy shall exceed twenty dollars, the right to jury trial shall be preserved.
>
> U.S. Const. VII

The pertinent portion of the Fourteenth

Amendment provides:

> No state shall make or enforce any law which shall abridge the priveliges or immunitiesof citizens of the United States;Nor shall any state deprive any person of life, liberty, or property, without due process of law

U.S. Const. Amen XIV.

28 U.S.C. 1443:Any of the following commenced in a state courtmay be removedby defendant to district court...

> (1) Againstany person who is denied or cannot enforce in the courts of such state alaw providing for equal civil rights of citizens of the united States.
>
> (2) For any act underthe color of authority deprived from any law providing for equal rights.

42 U.S.C. Sec. 1981:

> All persons within the jurisdiction of the United States shall have the same right to sue,...to the full and equal benefit of all laws.

42 U.S.C. 1982:

> All persons of the United States shall have the same right in every state... toinherit, purchase lease and convey real and personal property.

42 U.S.C. 1983:

> Every person, who under the color of any statute, ordinance, regulation,

custom or usuage of any state...subject or cause to be subjected any citizen of the United States orother person within its jurisdiction thereto the deprivation of rights and priveleges secured by the constituion and laws shall be liable at law in equity or other proper proceeding for the parties.

28 U.S.C. In any action...where the constitutionality of a statute affecting piblic interest drawn into question.

PUBLIC LAW 102-166 signed November 21, 1991.

...to amend the Civil rights Act of 1964, to strengthen and improve federal civil rights laws, to provide for intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

STATEMENT OF THE CASE

New evidence of intentional employment discrimination, in the discriminatory practices to the federally protected rights, in exclusion from the United States Department of Agriculture alloted burley tobacco quota on Farm No. 3148, of one thousand nine hundred forty-six (1,946) pounds became evident in untimely notice on June 21, 1990.

Total loss of Agricultural Stabalization and Conservation Service federal quota verified

by Mr. Jeff Beecham ,Executive Director of the Agricultural Stabalization and Conservation Service in Lawrence County,on March 3, 1991.

This federal program is conducted on the non-discriminatory basis under the Equal Employment Opportunity of the Civil Rights Act of 1964 Title VII, amended by Public Law 102-166 on November 21, 1991.

Petitioner has complained many times to the exclusion from federally protected civil rights and interests, use and to dispose, in Farm 3148, and the exclusion from federally funded burley tobacco program to the ASCS provided in the Agricultural Act of 1938.

Petitioner complainted when the alloted burley tobacco sold on Farm 3148(V1756) was grown on another farm. Title 18 sec. 1001 U.S. Criminal Code provides fine or imprisonment (App. C.p.41).

Petitioner complained to ASCS Office when alloted federal burley quota sold without her signature in violation of sec 318 of 1938 Act.

The District Court delayed filing complaint and demand for jury trial for relief from damages submitted on December 26, 1991, with one hundred ($120.00) until writ of Mandamus to the United States Court of Appeals for the Sixth Circuit on January 23, 1992.Re:Earlene Polyak No. 92-5084(App. C p.40).

On the same day, January 23, 1992, the District Court filed complaint and demand for relief from damages in total loss of United States Department of Agriculture alloted burley to Farm No 3148(V1754)No. 3-92-0074 Earlene Polyak v Edward Madigan,Secretary of Agriculture (App.C p.40).

The District Court delayed filing complaint and demand for relief injury trial for damages on this NEW EVIDENCE, and set aside final order on Rule 60.02 Fraud(whether intrinsic or extrinsic) and misrepresentation by adverse party Federal Rules of civil Procedure No. 1:85-0125 Earlene Polyak v Thomas Stack and Henry Henry & Stack submitted on January 8,

1991(App B.p. 25).

The District Court delayed filing complaint and demand for jury trial for relief from damages on NEW EVIDENCE of discrimination in loss of federal alloted burley tobacco to Farm No. 3148(V1754) and motion to set aside order pursuant to Rule 60.02 FRcivP submitted on January 31, 1991 in case 1-84-0082 Frank Hulen and Wilma Lesnansky v Earlene Polyak Counter-claim(App. B.p.19).

The District Court delayed filing complaint and demand for jury trial for relief from damages on NEW EVIDENCE and set aside order Rule 60.02 FRcivP submitted on January 31, 1991, No. 1:84-0083 Earlene Polyak v Frank Hulen and Wilma Lesnansky (App. B.p.22).

When the Court of Appeals delayed filing Applications for Permission to Appeal in 1:85-0125; 1:84-0082 and 1:84-0083, Petitioner submitted Writ of mandamus to the Court of Appeals to District Court to file complaints and demand for jury trial on April 8, 1991.

The Court denied these Application for Permission to appeal, but found elements for appeal, and ordered the District Court to file applications as appeal on the date received on March 21, 1991, Case Nos.91-8517(1:840082); 91-8518(1:85-840082; and 91-8519(1:85-0125 on May 22, 1991(App.A.p. 8).

The Court of Appeals sent second order after May 22, 1991, back dated to May 14,1991, denying writ of mandamus, instead of to delayed filing, refusing to address No. 91-5038 (App.A.p.6).

The above appeals became 91-5655(91-8517 (1:84-0082); 91-5655(91-8518)(1:840083 counter claim, and 91-5657(91-8519)(1:85-0125, which were consolidated against Petitioner's objections to different subject matter, and different parties, and different circumstances (App.A.p.8).

The Court of Appeals issued a second back dated order and refused to consider writ of mandamus for delay in 91-5655/5656/5657 affirm-

ing District Court's delayed filing on their order of May 22, 1991 ordering District Court to file appeals Nos. 91-5655/5656/5657 May 14, 1991 Writ No. 91-5308 (App.A.p.6).

On September 23, 1991, Petitioner submitted a complaint and demand for jury trial for relief pursuant to Rule 60.02 FrcivP, and set aside order in 1:87-0075 Frank Hulen and Wilma Lesnansky v Earlene Polyak Counter-claim with initial removal order denied on September 29, 1987 (App.B.p. 31).

This is Robert Boston's, son of William Boston, Boston Bates & Holt, initial order to sell Petitioner's "interest therein"(including this federal alloted burley quota Farm 3148, to the Honorable Jim Hamilton on August 21,1987.

Petitioner immediately removed order within eight(8) days and counter-claimed in the United States District Court on August 28, 1987, but counter claim held until and untimely filed on September 29, 1987. (Second order to sell3148.

The District Court delayed filing complaint

and demand for jury trial for relief from damages on Robert Boston's unconstitutional order to sell Farm No. 3148 on New Evidence of total loss of federally protected rights in burley tobacco quota.

After the District Court continued delay without filing complaint and demand for jury trial, Petitioner submitted writ of mandamus for delay with one hundred ($100.00) to the Court of Appeals 1:87-0075.

The District Court filed complaint after notice from the Court of Appeals of writ, file stamped and placed in a drawer on November 19, 1991(App. B. p. 31).

Petitioner did not know if order could be appealed from a drawer and submitted application for permission to appeal to the court of Appeals,denied filing, but after motions filed on General docket No. 91-8553(1:87-0075),but no further action (App.A.p.15).

After application for permission to appeal denied filing, Petitioner submitted a Notice of

Appeal on December 12, 1991 No. 91-6489(1:87-0075)(App. B.p. 29).

The Court of Appeals misrepresented suggested hearing en banc from fifteen (15) copies of briefs, and misrepresent as petition on February 18, 1991 91-6489(1:87-0075(See note App. A p. 17).

The court of Appeals has denied writ of mandamus 91-6275(1:87-0075) on (App. Ap.12).

The court of appeals neglected to consider writ of mandamus for abuse of discretion in delay to file complaint and to issue order enjoining the use of the Honorable Thomas A Wiseman's order enjoing Petitioner from filing further complaints regarding her property in Lawrence County on November 13, 1985.

Petitioner's federally protected rights in properties including ASCS burley tobacco have been sold without any compensation,without notification of time, place, amount of proceeds and without entering order of sale for right of redemption and right of Appeal Rule 3 FRcivP.

REASONS WHY WRIT SHOULD ISSUE

This writ of certiorari should issue to review the intentional employment discrimination in the discrininatory practices with reckless indifference to federally protected rights, use and to dispose of these properties, including the exclusion from the United States Department of Agriculture federal alloted burley tobacco quota of one thousand nine hundred forty-six (1,946) pounds in 1990, and total loss of the contract crop quota on March 3, 1991.

The discrimination against federally protected rights is provided protection in the Civil Rights Act of 1964, in Equal Employment Opportunity Title VII, and VI, which is strengthened by new legislation in Public-law 102-166 passed on November 21, 1991.

The Landowner is further provided protection from discrimination in the Agricultural Act 1938, sec. 318, and Title 18 Sec.1001 U.S. Criminal Code.

1. THE COURT OF APPEALS AFFIRMS ABUSE OF DISCRETION IN DISCRIMINATION AND DENIAL OF DUE PROCESS TO FEDERALLY PROTECTED RIGHTS

The Court of Appeals for the Sixth Circuit continues to affirm abuse of discretion in denial of due process in deprivation of federally protected rights with filing complaints and demand for jury trials for relief from damages on NEW EVIDENCE of intentional discrimination, and discriminatory practices in federal alloted burley quota to Farm No. 3148 in the above five appeals.

This new evidence of intentional discrimination with malice and reckless indifference to the federally protected rights by adverse parties resulting in the denial of due process deprivation of federally protected burley tobacco quota is grounds to set aside all orders regarding Farm No. 3148 pursuant to Rule 60.02 FRAUD(whether intrinsic or extrinsic) and misrepresentation by adverse party, Federal Rules of Civil Procedure, and the Court by its own order may set aside all orders.

The District abused discretion in holding five complaints submitted on new evidence of discrimination in the total loss of federal burley quota from Farm. No. 3148 for ninety(90) days without filing.

The Complaints held in No.1:85-0125 Earlene Polyak v Thomas Stack and Henry Henry & Stack from January 8, 1991, No. 1:84-0082 Frank Hulen v Earlene polyak (Counter-claim),and No. 1:84-0083 Earlene polyak v Frank Hulen and Wilma Lesnansky submitted on january 31, 1991.

After prolonged delay, Petitioner submitted writ of mandamus with excess cost on one hundred ($100.00), but Court of Appeals continued discrimination by holding writ.

Petititioner submitted applications for permission to appeal in all three complaints.

The Court of Appeals ordered complaints filed in the District Court on the date they received applications March 21, 1991.But later denied writ because cases filed May 22,but 91-5308 backdated to May 14,1991(91-5655/56/57).

The Court of Appeals consolidated appeals to discrimination against federal right to burley quota on Farm 3148, over all of Petitioner's objections to different circumstances, and parties No. 91-5655/5656/5657.

In fact,the appeat to Thomas Stack and Henry Henry & Stack is supressed in bias for Frank Hulen. The District Court discriminates against Petitioner in styling all complaints in bias for Frank Hulen.

No. 91-5657(91-8517)(1:85-0125) complaint against attorney negligence and malfeasance denied on June 3, 1988, on directed verdict without attorneys taking the stand or the case going to the jury. The Honoablbe James Higgins denied motion to disqualify and to rescue.

The District court denied the complaint on Judge Wiseman's order November 13,1985 Case No. 1:85-0116 Earlene Polyak v Jim Hamilton et al, for puting complaint against state judge, and granted official immunity to state judge 1983.

Congress intended 1983 to be an independent

> protection for federal rights and there is nothing to suggest that Comgress intended to expand the common-law doctrine of judicial immunity to insulate the state judge completely from federal review. United States v DEtroit, 200 US 321 327 26 S ct 282 287 50 L Ed 499.

On Aptil 30, 1986, The Honorable Thomas A Wiseman stated in a letter to John P. Hehman, Clerk of court of Appeals, "That order was enter ed because of Mrs. Polyak's filing against various persons in this Court...she should be severley sanctioned threr for."

This discrimination against federal rights continues with the denial of filing complaints for relief in jury trial for damages in the District Court, and all appeals are dismissed without oral argument in docket control in the Court of Appeals for the Sixth Circuit.

The Court of Appeals consolidated nos. 91-5655/5656/5657 for appeal but issued different orders in 91-5655/5656 to sanction by doubling costs and attorney fees awarded to Robert Boston in these appeal -Re; Earlene Polyak, No. 91-5655(91-85-17)(1:84-0082 is a counter-claim. Regardless of District Court

untimely filed in October 1984, Petitoner understood from conservation with judge Wiseman, she would be allowed complaint against discrimination against federal right to jury trial, negligence and malfeasance and relief that when she could not enforce provided equal Civil Right in state court 28 U.S.C. 1443 to Tennessee Statute Partition in Kind 29-27-117.

> If exact partition cannot be made without material injury to the parties, or some one of them, the committee may make partitions as nearley equal as they can, and charge thelarger shares with the sums necessary to equalize all shares.TCA 1932.

This partition in kind statute is has been upheld six(6) miles north of Farm 3148 1981 by state Judge, and six (6) miles south of Farm 3148 by state Judge, Judge Hamilton one out of three judges ruled against statute in discrimination against Petitioner 's federal protected right to ASCS burley quota provided in the by the Civil Rights Act 1964 and strengthened in Public Law 102-166.

No. 91-5656(918518)(1:84-0083 filed October 18,1984 is Petitioner's complaint

against intentional discrimination against federally protected rights in properties including burley tobacco quota and other federal contract crops in agreed partition of property in Farm 3148. Petitioner has pays Property Taxes.

Cases 1:84-0082 and 1:84-0083 have been appealed since the District Court's abuse of discretion in intentional dismissal when Petitioner was in heart unit of hospital for multiple by-pass surgery.

Regardless of Court of Appeals allegation that state statute rum on sale of property, an attorney verifies that no statute to amount of time. If true seven year statute rum while property still in settlement by agreement in 1976, seven (7) years and Defendants sale void, even if William Boston, Boston Bates & Holt still hold Farm 3148 in estate.

2. <u>THE COURT OF APPEALS CONTINUES TO AFFIRM ABUSE OF DISCRETION IN DISCRIMINATION AND DENIAL OF DUE PROCESS TO FEDERALLY PROTECTED RIGHTS IN COMPANION CASES</u>.

The Court of Appeals continues to affirm the abuse of discretion in discrimination

in denial of due process to file complaint against deprivation of federally protected right to burley quota on Farm No. 3148.

The District Court held complaint and demand for jury trial for relief from damages and motion to set aside order, reopen action, pursuant to rule 60.02 FraudFRcivP.

When the district court continued to hold complaint, Petitioner submitted Application for Permission to Appeal to the Court of Appeals, but the Court of Appeals denied filing permi-on to appeal, and disregarded grievance to Chief Judge.

After Petitioner spent one hundred ($100.00 for a writ of mandamus to file complaint, the District Court filed complaint when notice from Court of Appeals, but denied action on New Evidence of intentional discrimination in loss of federally allotedburley tobacco November 19,1991.

Petitioner filed notice of appeal in 1:87-0075 on December 13, 1991 No. 91-6489. Meantime the Court of Appeals filed permission to appeal No. 91-8553(1:87-0075.

BEST AVAILA

On February 18, 1992 the Court of Appeals pulled suggestion for hearing en banc from fifteen(15) copies of brief and misrepresented in petition for hearing in denial on 91-6489 on February 18, 1992.

In denial for writ no. 91-6275(1:87-0075) the court of Appeals denied on three previous appeals 91-5655/5656/5657, and on res judicata and, mentioned, but disregarded ruling on writ against the District Court denial of filing complaints on Judge Wiseman's order on November 13, 1985.

The District Court misrepresents 1:87-0075, which Robert Boston's order to sell property including federally protected right against employment discrimination in federal alloted burley quota program for sale of Petitioner's"interest therein" at Public Auction immediately removed from state court on September 28, 1987,within seven seven(7) days pursuant 28 U.S.C 1443.

The District Court misrepresents 1:87-

BLE COPY

0075 Robert Boston's order, as his father's William Boston Bates & Holt order on July 28, 1983.

This case waw improperly returned to the state as William Boston's Boston Bates & Holt order on July 28, 1983.

The District ourt continues discrimination in bias for Robet Boston's order discrimination with malice . reckless indifference to Petitioner's federally protected right to federal alloted burley quota on property sold some time in November 1987, without any compensation, without notification of date of salw, without notification of place of sale without dividing any proceeds, and without entering order for right of redemption and Right of Appeal Rule 3 FRcivP.

The District Court alleges to documents presented with Complaint, but supresses fact that documents composed of two transfers of federal alloted burley without Petitioner's signature in violation of Agriculture Act 1938

in which sec 318 stipulates that burley quota cannot be transferred without the signature of operator and owner.

These documents containes a copy of the Title 18, sec 1001 which states that the sale on marketing card (v175493148) of tobacco grown on another farm provides a fine of $10,000.00 and possible imprisonment.

The District Court supress information in documents of false statement served upon Pettitioner by Mr. Jeff Beecham,ASCS.

Petitioner is appointed Administrator in the state of this property and she has never given anyone consent to sign her name or appear in proxey for her.

The District Court continues denial of filing complaint and demand for jury trial for relief for damages for intentional discrimination in the federally protected rights in burley tobacco quota submitted on December 26, 1990, but delayed filing until Petitioner submitted at excess expesne ($100.00) writ of

mandamus to the court of Appeals. The complaint Earlene Polyak v Edward Madigan, Secretary of Agriculture was filed on Janaury 23, 1992, in the District Court, on the same day notice for response of Judge.

This writ of mandamus for delay was addressed to the Honorable Thomas A. Wiseman, but letter to Judge Higgins. This is the fifth complaint and demand for relief in jury trial for damages on new evidence of intentional discrimination denied filing in District Court against Petitioner's federally protected right in burley quota on Farm No. 3148.

3. THE COURT OF APPEALS AFFIRMS ABUSE OF DISCRESSION IN DISCRIMINATION IN DENIAL OF DUE PROCESS IN FACT AND LAW IN RULE 26 EXCEPTIONS TO RES JUDICATA FOR WRONG

The Court of Appeals affirms all abuse of discression in bias for intentional discrimination in discriminating practices against federally protected rights in denial of filing complaints and demands for jury trial for relief on new evidence of total loss of federally alloted burley to Farm No. 3148.

The Court of Appeals affirms the denial of due process and delay in filing complaints in discriminating practices in docket control after Petitioner is obligated to spend excess amounts of money in further discrimination for action in writ of mandamus to get complaint filed in the District Court.

The District Court disregards New Evidence of discrimination against federally protected rights to in bias for parties, and in misrepresentations, which are grounds to set aside all orders in cases regarding Farm 3148(V1754) pursuant to Rule 60.02 FRAUD(whether intrinsic or extrinsic) and misrepresentation by adverse parties FRcivP.

In 91-5655(84-0082)discrimination practices against federal rights to federal alloted burley,case was dismissed after Robert Bostons misrepresentations of state case in initial order for sale on July 29, 1983,as final order. There is NO FINAL ORDER is state case dismissed on April 26, 1984, there fore NO RES JUDICATA.

> The Supreme Court has stated it as "familiar law"that only final judgment is res judicata."G&C Merriam Co v. Saafield, 241 US 22 28 36 S Ct 477 60 L Ed 868 (1916).

In 91-5656(1:84-0083)Petitioners complaint and demand for jury trial for federally protected rights to state statute Partition in Kind and severalty,and federally alloted burley

> The Court may...in accordance with the wishes of one or more cotenants,ororder an allotment of shares...in kind and severalty and direct the sale of the other portion if it is not susceptable to partition in kind,Vandenburg v Molder 4 Tenn Higgins (1913)

This complaint for federal rights was dismissed in error for res judicata awarding Robert Boston one thousnd one hundred twelve ($1,112,67) on misrepresentations of state case as final order.

In 91-5657(1:85-0125) Complaint and demand for jury trial on negligence and malfeasance for relief in damages in failure to protect federal rights dismissed by one Judge order in directed verdict.Judge Higgins refused to rescue times after Petitioner submitted timely

and proper affidavit pursuant to Rule 28 144:

> Whenever a party at any proceeding in a district court makes and files a timely affidavit that a jusge before whom a matter is pending has a personal bias against him or in favor of a party,Judge shall proceed no further, but another Judge shall be assigned to hear proceeding.

In No.91-6489(1:87-0075) Petitioner's timely and proper removal to District court for intentional discrimination against federally protected rights against Robert Boston INITIAL ORDER(Father,William Boston, Boston Bates first order to sell federal rights 1983) submitted to the Honorable Jim Hamilton on August 21, 1987

Petitoner received copy of Robert Boston order on submitted August 21, on August 24, and immediated submitted removal 28 U.SC.1443, and Counter-claim No. 1:87-0075 to District Court.Alleged remand in bias for state parties unconstitutional and denial of due process.

> And some cases imply that permitting remand of pendent state claims denies defendant protection of the removal statute and encourages manipulative dismissals. In Re: Greyhound lines v v Detroit, 598 F 2d 884.

In 92-5084(3-92-0074, Petitioner's complaint for relief in jury trial from damages of intentional discrimination, and discrimatory practies to federally protected rights to federal burley tobacco quota contract was only filed after writ of mandamus for delay in the District Court. It appears invalid number.

This discrimination practices included ADDITIONAL NEW EVIDENCE of complaint of another land owner suing the U.S. Department of agriculture for discriminatory enforcement of USDA policies and procedures for the purpose of hara ssment. Joe W. White & Harlen Farms v Jeff Beech and Jeff Hudson and the Department of Agricultur No. 1:91-109 filed October 10, 1991.

The District Court filed complaint for local party, but delayed federally protected right to due process protection of Petitioner.

> Fourteenth Amendment protection of proper does not SAFEGURARD ONLY RIGHTS of undisputed ownership, but also extends protection to any significant property interest, in cluding statutory entitlements. Feuntus v Shevin,(1972) 407 US 92 S Ct 1983 32 L Ed 566.

Rule 60.02 FRcivP provides for set aside of on misrepresentaitons by adverse parties and further relief is provided for new trial in Rule 26 Exceptions to res judicata and Collatel Federal Rules of Civil Procedure.

(d) the judgment in the first action was plainly inconsidtent with a fair and equitable implementation of a statutory and constitutional scheme.

(e) For reasons of substantive policy in cases involving a CONTINUING WRONG .the plaintiff is given option to sue from time to time.

IN CONCLUSION

Petitioner prays that writ of certiorari issue from this Supreme Court to review the discrimination, and discriminatory practices to the federally protected rights , and the exclusion from the United STates Department of Agrilulture alloted burley quota in 1990, and total loss from Farm 3148 in 1991,

Petitioner prays that writ issue to review all discriminatory practices for new trials and compensatory damages in future pecuinary loses,emotional pain, suffering, inconvience, mental anguish and loss of enjoyment of life,

and the loss never to be regained in her retire-

home.

On the 8th day of April, 1992.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
and/or
4063 Hood Road
Palm Beach Gardens
Florida 33410
(407) 627-3564

Certificate of Service

I certify that a true copy of this plead ing has been mailed to Robert Boston 2100 One Commerce Place, nashville, Tennessee 37219,and Samuel Warner 119 South First Street,Pulaski, Tennessee 38478.

Earlene Polyak

I certify that the above information is true and correct to the best of my knowledge and belief.

Earlene polyak

STATE OF FLORIDA
COUNTY OF PALM BEACH

NOTARY PUBLIC

My comm'n expires:_____

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Frank Hulen and Wilma Lesnansky v Earlene Polyak(counter-claim) 91-5655(D.C. 1:84-0082).

Earlene Polyak v Frank Hulen and Wilma Lesnansky 91-5655(D.C. 1:84-0083).

Earlene Polyak v Thomas Stack and Henry Henry & Stack 91-5657(D.C. 1:85-0125).

Consolidated over Appellant's objections.

Before: BOGGS and NORRIS, and TIMBERS Senior Circuit Judge.

Appeal denied: November 15, 1991.

Petition for Rehearing denied:January 13, 1992.

Companion Cases: Earlene Polyak v Frank Hulen and Wilma Lesnansky (Counter-claim 91-64-89(D.C. 1-87-0075).

Earlene Polyak v Edward Madigan, U.S. Secretary of Agriculture 92-5084(D.C. 3-92-0074

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND WILMA LESNANSKY
Plaintiff/Appellees,
(91-5655 FILED JAN 13 1992
EARLENE POLYAK,
Plaintiff/Appellant
(91-5656)(91-5657)
v
EARLNE POLYAK ORDER
Defendant/Appellant
(91-5655
FRANK HULEN AND WILMA LESNANSKY
Defendants/Appellees
(91-5656
THOMAS STACK AND HENRY HENRY &
STACK
Defendant/Appellees
(91-5657

BEFORE BOGGS AND NORRIS, Circuit Judges, and TIMBERS, Senior Circuit Judge.

Earlene Polyak petitions for rehearing of this court's order, entered November 22, 1991, affirming the district court's judgment which the district clerk not to file the complaints which she had submitted in these cases.

After careful consideration of the petition for rehearing, the panel concludes that it did not overlook or misapprehend any point of law or fact in its order, entered November 22,1991. Fed. R. App. P. 40(a).

Accordingly, it is ordered that the petition for rehearing be and hereby is denied.

ENTERED BY ORDER OF THE COURT

Signed Leonard Green,Clerk

Case Nos. 91-8517/18/19
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(91-8517 and 91-8518
EARLENE POLYAK FILED MAY 22 1991
Petitioner
v
FRANK HULEN AND WILMA LESNANSKY
(91-8519)
EARLENE POLYAK
Petitioner ORDER
v
THOMAS STACK AND HENRY HENRY & STACK
Respondents

BEFORE: KEITH AND BOGGS, Circuit judges, and
Wellford Senior Circuit Judge.

The petitioner a pro selitigant, has filed three applications for leave to appeal three orders of the district court entered March 21, 1991. Those orders denied her motions to set aside prior judgments in the three cases and and to permit her to amend the complaints ther in by adding a claim based on newly discovered evidence.

The rules do not provide for applications for leave to appeal under these circumstances. The applications, however, contain the elements

for notices of appeal as set forth in Rule 3(c) Fed.R.App.P. See United States v Christoph, 904 F.2d 1036(6th Cir 1990 Cert Denied 111S.Ct. 1991), and we construe them notices of appeals erroneously filed in this court. See Bertoli 812 F.2d 136 138(3rd Cir. 1987)(application for leave to appeal under 28 USC §1292(b). As such, they should be entered on the district court docket sheets as notices of appeals filed as of the date they were received by this court.

It therefore is ordered that the clerk of this Court note on applications the date they were received and transmit them to the district court to be deemed filed threrin as notices of appeals on the dates so noted. Rule 4(a)(1) Fed R. The fees paid by the petitioner for filing the applications shall be applied to the fees for such appeals.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

Case No. 91-5308
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: EARLENE POLYAK FILED MAY 14 1991

Petitioner

ORDER

BEFORE: KEITH AND BOGGS, Circuit judges and WELLFORD Senior Circuit Judge.

The Petitioner, a pro se litigant who unsuccessfully sought to reopen three civil actions in the district court seeks a writ of mandamus directing that the court to grant jury trials to her in those actions as to the original complaints and new claims based upon newly discovered evidence. In response, the district court has submitted copies of its docket sheets.

The these actions in question were all decided adverdsly to the petitioner. This court affirmed the district court in each action. In early 1991,the petitioner filed motions seeking each action and to amend the complaints therein to include additional claims. The district denied relief in three separate orders entered March 21, 1991.

The petitioner did not file notices of in the district court.Instead, she filed with this court applications for leave to appeal hereto. In a separate order we have construed those applications as notices ofappeal with instructions that they be transmitted to the district court as such under Rule 4(a)(1) FEd. R.App, See Polyak v Hulen et a191-8517/18/19.

Mandamus petitions cannot be used to substitute for appeals City of Cleveland v Kruoan sky, 619 F 2d 572 575(6thCir.) cert denied 449 US 834(1980) or in a situation where review is available by means of appeal Moses H Cone Memo rial Hospital v Mercury Construction co. 460 US 1 8 n.6(1983. here the mandamus petitions addresses the same issues as the appeals taken from the district court's orders March 21,1991. We will not address them in posture of Mandamus petition. Petition is denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green Clerk

Nos. 91-5655/5656/5657

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND WILMA LESNANSKY
Plaintiffs/Appellees
(91-5655

FILED NOV 15 1991

EARLENE POLYAK
Plaintiff/Appellant
(91-5656)(91-5657

v

EARLENE POLYAK

ORDER

Defendant/appellant
(91-5655)

FRANK HULEN AND WILMA LESNANSKY
Defendants/Appellees
991-5656

THOMAS STACK and HENRY &
STACK
Defendants/Appellees
(91-5657)

BEFORE: BOGGS AND NOTTIS, Circuit judges. and
TIMBERS, Senior Circuit judge

Earlene Polyak, a pro se resident of Michigan and Florida, appeals from the district court judgments(sic order) directing the Clerk of the district court not to file complaints which she had submitted. these cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, the panel unanimously agrees that oral argument is not necessary. Fed. R.App.34(a

Polyak's complaints are a part of her courtaction which resulted in the partition sale of land that she and her siblings,Hulen and Lesnansky, had inherited as tenants in common. Polyak seeks to overturn the Tennessee court decision, which has become final under state law, by instituting numerous federal actions against parties to the state litigation and their representatives. Polyak seeks to challenge the Tennessee decision on grounds of newly discovered evidence. polyak asserts that she has new evidence:(1) that a burley tobacco allotment for the land in question was transferred without her consent; and(2) that she was forced to pursue her case in state court and in the federal courts while she was in ill health.

The district court denied Polyak permission to file complaints based on its earleir order enjoining Polyak from filing further litigation regarding state court action without express permission of the Court. Polyak has

filed timely appeal.

We affirm the district court's judgment (sic order) for the reasons stated in the three memoranda orders issued on March 21,1991.

This court has previously approved the district court's practice of requiring prolifi litigators to obtain leave of the court before further complaints will be accepted for filing. See Filipas v Lemons 835 F 2d,1145 1146(6th Cir 1987 order. The district court has prperly concluded that the doctrine of res judicata bars Polyak's complaints.Despite her claims of newly discovered evidence, her complaints are nothing more than a attempt to relitigate previous state court proceedings that were terminated in a final state court action adverse to Polyak's interests. Affording the res judicata effect to Tennessee state court judment(sic no final order) as would the Tennesse state court judgment(sic no final order)as would the Tennessee court Migra v Warren City School Dist Bd of Edux 465 U.S.75(1984):Whit-

field v City of Knoxville.756 F 2d 455,458-60 (6th Cir 1985), we conclude that the doctrine of res judicata, as applied in Tennessee law, bars the claim which Polyak sought to raise her complaints.

We conclude this case is appropriate for application of sanctions against polyak pursuant to Fed. R. P.38 See martin v Commissioner of Internal Revenue 756 F 2d 38, 40-41 6th Cir) These cases are Polyak's forty-second, forty-fourth appeals(including prior mandamus petitions)concerning this property dispute. This courthas assessed sanctions against Polyak in cases similiar to this case. Due to the frivolous nature of this appeal, we impose double costs and attorney fees against Polyak pursuant to Fed. R. App. P. 38.

The district court's judgments(sic order) are hereby affirmed pursuabt to Rule 9(b)(3). An itemized and verified bill for costs and fees may be filed with the Clerk.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

No. 91-6275

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: EARLENE POLYAK

Petitioner

FILED DEC 13 1991

ORDER

BEFORE: KENNEDY AND BOGGS, Circuit judges, and LIVELY Senior Circuit judge.

The petitioner seeks writ of mandamus directing the clerk of the district court for the Middle District of Tennessee to accept for filing a complaint and jury demand she has submitted therein. She also asks this Court to enjoin the district court's enforcemment of its order directing the Clerk not to accept for filing complaints submitted by petitioner pertaining to state court proceeding involving estate property in Tennessee. The latest complaint pertains to those proceedings.

On the cover of the present petition the petitioner refers to three pending companion cases on appeal wherein the district court refuse to accept complaints pertaining to estate property. This court recently affirmed that refusal

as to all three complaints. See Hulen v Polyak nos.91-5655/5656/5657(6th cir Un Pub. Nov. 15. 1991). Therein the court concluded the petitioners claims to estate property were barred by doctrine of res judicata and could not be relitigated in federal court because the court concludes the appeals(the petitioners forty-second and fourty-fourth cases before this court) were frivolous, double costs and attorney fees were assessed against the petitioner under Rule 38 FEd.R.App.P.

We conclude this court's order in the above appeals is dispositive of the present mandamus petition.

It is therefore ordered that petition for writ of mandamus is denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MS. Earlene Polyak
4063 Hood road
Palm Beach Gardens
Florida 33410

December 16, 1991

91-8553

Dera Mrs. Polyak:

We are returning your check because we cannot accept your permission to appeal

Thank you for your assistance. If you have any further questions, please do not hesitate to contact this office.

Very truly yours,

Leonard Green, Clerk

P.C. Ms Ehrlick
Team 3

91-8553

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Polyak v Hulen
Appeal from:Middle District of Tennessee
at nashville
permission to appeal 1292(b) PRO SE

Case Associations

Prior Cases:
91-6275
Date Filed*** Date Disposed** disposition*
Current Cases None.

LOWER COURT INFORMATION

District No. 0650-3: 87-0075
Trial Judge:Thomas A Higgins
Date order/judgment 11/19/91
Date NOA filed:**/**/**

Caption

EARLENE POLYAK
Petitioner
v
Frank Hulen and Wilma Lesnansky

Counsel Information

EARLENE POLYAK	
Petitioner	Earlene Polyak
v	407-627-3564
FRANK HULEN	NTC pro
Respondent	4063 Hood road
WILMA LESNANSKY	Palm Beach Gardens
Respondent	Florida 33410

NO. 91-6275

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RE:EARLENE POLYAK FILED MAR 23 1992

ORDER

BEFORE: KENNEDY AND BOGGS, Circuit judges, and LIVELY Senior Circuit Judge

The petitioner filed with this court a petition for rehearing writ of mandamus by which she sought and order(1) directing the Clerk of the district court to file a complaint and jury demand therin, and(2) enjoining the district court directing the clerk therein not accept,without prior approval, new complaints submitted by the petitioner pertaining to state court proceeding involving the division of certain estate property.We denied writ of mandamus December3, 1991.

The petitioner now seeks rehearing of that order as ell as the documents previously submitted in this action.We conclude the petitioner submitted no new arguments.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, Clerk

No. 91-6489

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FRANK HULEN AND WILMA LESNANSKY

Plaintiff-Appellees

FILED FEB 1819?2

v

ORDER

EARLENE POLYAK (counter-claim
Defendant-Appellant

The court having received a petition for hearing en banc, and the petition having been to all active judges of this court, and no judge having favored suggestion,1

It is ordered that the petition be and hereby denied.

ENTERED BY ORDER OF THE COURT
Signed Leonard Green, clerk

1. This suggestion for hearing en banc was taken from first page in fifteen (15) copies of briefs for hearing en banc by the full Court.

Earlene Polyak

APPENDIX B

In the United States District Court, Middle District of Tennessee, Columbia Division at Nashville, Tennessee.

Frank Hulen and Wilma Lesnansky v Earlene Polyak (Counter-claim) No. 1:84-0082.

Earlene Polyak v Frank Hulen and Wilma Lesnansky No. 1:84-0083.

Earlene polyak v Thomas Stack and Henry Henry & Stack No. 1:85-0125.

Before: Thomas A. Wiseman, Chief judge and Thomas A Higgins United States District Judges.

Court of Appeals ordered filed as of March 21, 1991.

Denied: March 21, 1991.

Companion cases: Earlene polyak v Frank Hulen and Wilma Lesnansky(counter-claim No. 1:85-0075. Filed November 19,1991.

Earlene Polyak v Edward madigan, U.S. Secretary of Agriculture 3-92-0074.

Filed:Jan 23, 1992

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL

FILED 3 21 91

v

1:84-0082

EARLENE POLYAK

ORDER

In accordance with the memorandum filed, the Clerk is directed not to file the amended complaint submitted by Plaintiff as a new action, to return the $120.00 mailing fee to Plaintiff b certified mail, to file stamp the motion, complaint and accompanying documents with date of receipt (Feb.1,1991), and revised documents with the date of receipt Feb. 5,1991) docket the documents and place them in case file of the above case.

To the extent that plaintiff seeks to reopen and/or amend her complaint, such requests are denied.

Signed Thomas A. Higgins
U.S. District judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL FILED MAR 21 91

V No.1:84-0082

EARLENE POLYAK(counter-claim

MEMORANDUM

The clerk is in receipt of a Motion for Hearing En Banc Motion to set Aside Final Order and Schedule Jury Trial on New Evidence and Restraining order against transfer constitutional possessed rights and interest, and an amended Complaint and Demand for Jury Trial.

In October 1984, Plaintiff attempted to remove this case from the Chancery Court of lawrence County Tennessee. By order entered on October 26, 1984 the Court dismissed Plaintiff's petition as untimely(Doc.13)After the denial of a motion to rehear, plaintiff appealed and the Courtof Appeals affirmed judgment(sic order)of this Court.

Thereafter, the case was assigned to the undersigned and a status conference was sche-

duled for October 28, 1987. When Plaintiff did not appear at the conference the case was dismissed for failure to prosecute. On appeal the judgment(sic order) of this court were affirmed by mandate issued by the Court of Appeals on November 7, 1988.

This cas and most current submissions comprise a mirror image of Polyak v Hulen et al 1:84-0083. The same case reasoning applies to both cases.

The Clerk is directed to treat the recent submissions in this case in the same manner as court directed in Polyak v Hulen 1:84-0083.

An appropriate order shall enter.

Thomas A Higgins
U.S. District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED MAR 21 91

V

No. 1:84-0083

FRANK HULEN AND
WILMA LESNANSKY

ORDER

In accordance with the memorandum filed, the Clerk is directed not to file the amended complaint submitted by plaintiff as a new action, to return the $120.00 filing fee by certified mail, to file stamp the motion complaint and accompanying documents with the date of receipt (Feb. 1,1991) and the revised documents with the date of receipt (FEb.5, 1991) an place them in the case file above.

to the extent plaintiff seeks to reopen and/or amend her complaint, such requests are denied

Signed Thomas A. Higgins
U.S. District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

FILED MAR 21 91

V

No. 1:84-0083

FRANK HULEN AND
WILMA LESNANSKY

MEMORANDUM

The Court is in receipt of plaintiff's Motion for hearing En Banc Motion to set aside final order on NEW evidence and restraining order against transfer of constitutional possessed right and interesr and Motion for Protective order.Although plaintiff captions her papers with the same case number for above styled case, the filing fee of $ 120.00 as if she intended to file a new action.

The original complaint in this case was filed on October 18, 1984. the Court dismissed the case on December 3, 1984 and granted defendant's motion for sanction. Plaintiff appeal ed that order along with other subsequently entered orders, to the Court of Appeals which affirmed the judgment(sic order).

Chief Judge Wiseman to whom all of plaintiff's cases were previously assigned, entered order in Polyak v. Hamilton 1:85-0116(November 13, 1985) enjoining plaintiff from filing any further actions regarding the state court order approving the partition sale of property in Lawrence County, Tennessee without advance approval from this court. At the same time, Judge Wiseman transferred all pending cases involving the undersigned . This court then scheduled a status conference for october 28, 1987 at which plaintiff failed to appear. The case was dismissed for failure to prosecute. Plaintiff filed notice of appeal to the court of Appeals,which affirmed the judgments(sic orders by mandate issued November 9, 1988.

The dismissal of this case is final.Plaintiff has attempted to and relitigate the same issues.This time plaintiff alleges new evidenceof unconstitutional seizure of a federal burley tobacco allotment to which she asserts she was entitled. The circumstances that plain

tiff describes ciontinue to revolve around the partition sale ordered in the Tennessee Court as such it is covered under injunction of Polyak v hamilton and is barred by res judicata.The has no authority to convene en banc hearing in this case,

Therefore, the Clerk is directed not to open a new case and to return the filing fee toplaintiff.The Clerk is further directed to stamp file plaintiff's latest submissions in this case with date of receipt Feb 1, 1991) docket and file them in case.

Plaintiff's motion to set aside the final order in this case is denied.Plaintiff is precluded from filing an amended complaint.

Signed ThomasA Higgins
U.S. District Court Judge

For examples of recent filings rising some of the same issues see Polyak v Hulen et al. 1-85-X-05 Polyak v Lesnansky 3-89-X-16.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK

V

THOMAS STACK AND
HENRY HENRY & STACK

FILED mar 21 91

No. 1:85-0125

ORDER

in accordance with thememorandum entered, the Clerk is directed not to file the complaint submitted by plaintiff as a new action to return $120.00 filing fee by certified mail, to file stamp the complaint and accompanying papers with the date of receipt docket the complaint and papers ans place them in the case file in above case. to the extent that plaintif seeks to amend her original complaint filed in this case or otherwise reopen the case, such request is denied. Plaintiff's motion for protective order is denied.

Signed Thomas A Higgins
U.S. District judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

EARLENE POLYAK FILED 3 21 91

V No. 1:85-0125

THOMAS A HIGGINS AND
HENRH HENRY & STACK

MEMORANDUM

Plaintiff has submitted an Amended Complaint and Demand Jury Trial and accompanying listing the above caption and docket nember. Althoug+he document submitted appears to be an attempt to amend the closed case, plaintiff tendered a $120.00 filing fee, suggesting that she intended to file a new one.

A final judgment in this case entered on june 6, 1988 upon defendant's motion for a directed verdict at the conclusion of plaintif case in chief. Thereafter, Plaintiff filed a motion for a new trial(Doc. 67) which was denied on June 17, 1988(Doc.69) Plaintiff then appealedDuring the pendency of appeal, plaintif filed an objection tocourt's order,which the Court treated as a Rule 59 motion and denied

on December 2,1988, the Court of Appeals by mandate issued on June 30, 1989, affirmed the judgment(sic order (Doc. 93).

Not to be deterred plaintiff complaint on January 12, 1990 asking that the case be reopened(Doc. 95). By order entered on January 22,1990 the Court directed the clerk not to file the complaint as a new case and refused to reopen case(Doc. 97)Plaintiff appealed that order, but later.Plaintiff attempted to appeal directly to the United States Supreme Court. but was informed that the Supreme Court had no jurisdiction to file appeal.

On January 8, 1991, plaintiff filed a new motion(Doc. 111) for a hearing en banc to set aside the directed verdict entered June 6, 1988. By order January 11,1991, the Court denied plaintiff's motion)Doc. 113).

In Plaintiff's instant papers she asserts new evidence of negligence and malfeasance because a burley tobacco allotment was trans ferred without her consent causing her financial loss and new evidence of disability in

that she was forced to prosecute her case in state court and this court while she was in ill health.

Despite the efforts of this court to inform her of the preconclusive effects of res judicata and the importance of final judgment (sic Order) plaintiff seeks to believe that she can refile the same case at any point. in fact plaintiff states on page 2 of her Amended complaint that she has the option to suing from time to time when there is a continuing wrong. Plaintiff has amply demonstrated her belief in this proposition by her determination to file complaints.

This court's order on November 13, 1985 in Polyak v Hamilton 1;85-0116 applies to enjoin plaintiff from filing any further action in this Court regarding the partition sale of Lawrence county property without court's permission. In attempt to relitigate judgment (sic) order she is denied permission.

Signed Thomas A Higgins Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN AND
WILMA LESNANSKY

FILED DEC 13 1991

v

No. 1:87-0075

EARLENE POLYAK
COUNTER-CLAIM

NOTICE OF APPEAL

Plaintiff gives notice of appeal to the abuse of discretion and conflict of interest discrimination and failure to rescue, in the denial of filing Complaint and Demand to Schedule Jury Trial for relief in damages on NEW EVIDENCE of denial of due process and the deprivation of civil and constitutional rights and interests, including exclusion from United States Department of Agriculture alloted burley tobacco quota, and total loss of burley tobacco Agriclutural Act of 1938 Sec. 318, and Title 18 Sec. 1001 U.S. Criminal Code, by the Honorable Thomas A Wiseman and ?Thomas A Higgins in the above styled case, pursuant to Rule 3 Right of Appeal Federal rules of Civil Procedure, and

Fifth Seventh and Fourteenth Amendments

Plaintiff appeals denial of motion to set aside order pursuant to Rule 60.02 Fraud(whether intrinsic or extrinsic) and misrepresentation by adverse party,Federal Rules of Civil Procedure in this timely and proper removal pursuant to 28 U.S.C. 1443. She appeals denial of restraining order against saleand transfer of any and all properties prusuant to Rule 26 Exceptions to Res judicata and.

On the 12th day of December 1991.

Respectfully submitted,

Earlene Polyak
4063 Hood Road
Palm Beach Gardens
Florida 33410

Certificate of Service

I certify that a treu copy of this pleading has beenmailed to the U.S Court of Appeals 6th Circuit. Cincinnati, Ohio 45202, Robert 2100 One Commerce Place nashville, Tennessee 37219.

Earlene Polyak

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL. FILED 11 19-91

V No. 1-87-0075
Judge Higgins

EARLENE POLYAK

ORDER

in accordance with the memorandum entered, the Clerk is directed not to file the Complaint and Demand for Jury Trial, and accompanying documents on as a separate action, to return the $120.00 filing fee to Earlene polyak by ceritifed mail, to file stamp the complaint and accompanying papers with the date of receipt (September 30, 1991) to return to Mrs. Polyak stamp filed copies, and toplace them in the case file of the above styled case. To the extent Ms. Polyak seeks to reopen the case, such request is denied.

It is soordered

Signed Thomas A. Higgins

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

FRANK HULEN ET AL.

FILED 11 19 91

V

No. 1-87-0075

EARLENE POLYAK

MEMORANDUM

The Court is in receipt of Earlene Polyak Complaint and Demand for Jury Trial, Motion to Set aside order and schedule jury trial on New Evidence and Issue Restraining order against Transfer of constitutionsl possessed rights and interests and accompanying documents including a check for $120.00. All of these documents were received in the office of the Clerk on September 30, 1991.

As with previous submissions it is not clear whether Ms Polyak intends to submit a new action.Inasmuch as she has submitted a filing fee, it would appear that she is attempting to file a new action. Inasmuch as she refers to the above styled case by name and case number, it appears she intends to submit her documents in the above styled case.

On September 29, 1987, Ms. Polyak filed with this court a Complaint and counter-claim & Demand Jury Trial and order for Dismissal(Doc. entry No. 1) By that filing Polyak attempted to remove a partition case brought her in the Chancery Court of lawrence County, Tennessee. In addition to defects in the petition for removal and failure to comply with the requirements of 28 U.S.C. 1146, judgment had already entered against Mrs. Polyak in Tennessee Chancery Court, therefore removal of that action to this Court was not proper. See 28 USC 1446 9b). By order entered October 2 1987, this Court remanded the case back to the Chancery Court of Lawrence County. Doc. 2&3).

Mrs. Polyak appealed the judgment(sic order) of this court to the Court of Appeals for the Sixth circuit, which affirmed the judgment(sic order) of thisCourt. On Sept ember 14, 1989, Ms. Polyak submitted a complaint and Jury Demand to reinstate or Reopen Case and Add Parties. As with such instant

as with instant the instant complaint,Ms Polyak submitted a cover sheet and filing fee using the the above styled case number.By order entered September 25,1989, this court directed the complaint not be filed as a regular case, but thatthe case be assigned a general docket number.That companion case to the above styled case in Hulen v Polyak No. 1-89-X-12.

On September 25, 1989 Ms Polyak filed application for writ of habeas coepus to bring her case before the Court in the above styled case(Doc.18), which was denied by order entered October 3, 1989.(Doc.19). Again,Ms. Polyak appealed that order to the Court of Appeals,which, mandate issued July 11, 1990.

Ms. Polyak seeks again to reopen this case, pursuant to Rule 60 (sic Rule 60.02 Fraud)Federal Rules of Civil Procedure, by alleging new evidence that could not have been available at the time this case was considered.She alleges that she was unconstitutionally deprived of U.S Department of Agriculture allotted burley quota

from the property that was the subject of state court partition action. She further alleges that she was not informed of the total loss of quota until JUne 21, 1990.

Ms. Polyak has attempted to set aside final judgments (sic orders no jury trial or hearing ever held for judgment)in other cases in this court by making the same similar allegations of newly discovered evidence. See Polyak v Stack 1:85-0125; Hulen v Polyak 1:84-0082, and Polyak v Hulen 1:84-0083.

the above styled case remanded to state court because this court was without jurisdiction under 28 U.S.C. 1446(b).Without addressing any other issues , no amount of newly discovered evidence can alter the fact that original complaint was not timely filed in this court. Additional allegations cannot cure that fact(sic complaint held over thirty days by clerk), nor can they provide jurisdiction over this case. The case was properly remanded to state court has been affirmed by the Court

of Appeals. The judgment is final.

To the extent that Mrs. Polyak is attempting to file a new case in this court, the Clerk is directed to return the filling fee to Mrs. Polyak. The documents will be filed in the hove styled case. Mrs Polyak's request to set aside the final order in this case is denied.

An approproate order shall enter.

Signed Thomas A. Higgins
U.S. district Judge

UNITED STATES COURTOF APPEALS
FOR THE SIXTH CIRCUIT

RE: EARLENE POLYAK FILED MAR 6 1992
(in brief)
FRANK HULEN AND WILMA LESNANSKY

v No. 91-6489
D.C. 1:87-0075

EARLENE POLYAK

NOTICE OF MAILING
AND MOTION TO DISMISS ANY ATTORNEY COSTS

Appellant gives notice of mailing five(5) copies of the Joint Appendix. Robert Boston has not requested any items in joint appendiz.

Appellant checked with this Court by telephone this morning but robert Boston's Appelle Brief due on February 28, 1991, has not been received. He has been served as a courtsey to his clients.

Appellant moves to dismiss any late brief as Robert Boston has used this method of inserting attorney costsin prrevious briefs

On the 5th day of March 1992.
Earlene POoyak, 4063 hood road,
Palm Beach Gardens, Florida 33410
I certify that a true copy has been mailed to Robert Boston 2100 One Commerce Place Nashville Tennessee 37219. Earlene Polyak

APPENDIX C

In the United States Distrct Court, Middle District, Columbia Division, Tennessee.

Earlene Polyak v Mr. James Madigan, Secretary of the United States Department of Agriculture et al 3-92-0074

Complaint and Demand for Jury trial

Submitted December 26, 1991.

Writ of mandamus for Delay January 21, 1992. No.92-5084.

Complaint filed: January 23, 1992

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
538 U.S. Post Office & Courthouse
Cincinnati, Ohio 45202-3988

January 23, 1992

Honorable Thomas A. Higgins
U.S, District Judge
Nashville, Tennessee 37203

Re: Case NO. 92-5084
In RE: Polyak
District Court No. 86-0036
85-0116
85-0120
87-0075

Dear Judge Higgins:

We have today received and filed the enclosed document as a petition for writ of mandamus under Rule 21 of the Federal Rules of Appellate Procedure.

The Court has asked me to inquire if you wish to respond to this petition prior to this Court's consideration under Rule 21 to either deny the petition or establish a briefing schedule in the matter. If you do wish to respond please submit your response to this office within ten(10) days of this letter.

In addition to any response you may wish to make ,it would be helpful to the Court to review a current copy of the docket sheet in the litigation to which the petition pertains. Would you see that a certified copy of the docket sheet is sent to this office either with any response or under separate cover.

Very Truly yours,
Signed Leonard Green
Clerk

UNITED STATES DEPARTMENT OF AGRICULTURE
Agr. Stab. and Cons. Ser.
826 N. Military Ave.
Lawrenceburg, Tennessee 38464
November 1, 1984

Dear Producer
Your tobacco marketing card is for use in marketing tobacco produced on the farm for which the card is issued. If any entry is incorrect, please return the card for correction. It is important that you know th following information.

1. Pounds marketed above 110 percent of the farm quota are subject to a marketing quota penalty and are not eligible for price support.All tobacco (sold, given away or traded) must be recorded on your marketing card.Any tobacco left at the warehouse is considered marketed and is subject to penalty even though you are not paid for tobacco.

2. Tobacco marketed above 100 percent of the farm quota will be deducted from the farm quota for the following year. Undermarketing, uo to 100 percent of basic farm quota plus pounds leased to the farm will be added to to the farm's quota quota for the following year

3. You should not permit anyone to market tobacco on your card which was produced on another farm.

4. You must pick up your marketing card at the warehouse when your tobacco is weighed in. The card(s) must remain in custody of the warehouse until payment is made or you until your tobacco is removed from the warehouse.

5. You must pick up your card at the warehouse at the time you receive payment for your tobacco.

6. You should examine your marketing card and sale bills after each sale to se that the sale was correctly recorded.Report any error to the ASCS marketing recorder at the warehouse or to your local County ASCS office. If an unreported error results in your selling above 110 percent of your farm quota, you will be held responsible for payment of marketing quota penalties at $1.33 per pound.

7. If the marketing card is used to market tobacco produsedon this farm is identified on the marketing card of another farm,the persons involved may be subject to prosecution under Title 18 Section 1001 of the U.S. Criminal Code which provides for a fine of not more than $10,000.00 or imprisonment for not more than five years, or both, and the quotas on both farms may be reduced.

8. As soon as you complete your marketing, you must return your marketing card to the County ASCS Office.

Sincerely;
Signed E.Q. Williams, Chairperson
Lawrence County ASCS Committee